IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4186 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANEKBEN MAHENDRABHAI PANDYA WD/O MAHEDNRABHAI PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR PRADEEP PATEL for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 10/05/2000

ORAL JUDGEMENT :

Rule. Service of the rule is waived by Messrs Patel Advocates for respondent no.1

2. With the consent of the learned advocates for the parties, the matter is taken up for final disposal. The

present petition is filed by the widow of one Mahendrabhai M. Pandya, who died on 25.5.1994, who was working as a Badli workman since 1982. It is the case of the petitioner that the present petitioner had applied for an appointment on compassionate grounds as a Class IV employee and that the respondents had collected necessary details to ascertain the heirs and legal representatives of deceased husband of the petitioner. But thereafter the respondent authorities did not give any response to the application of the petitioner which was supported with the orders passed by this Court in similar circumstances.

3. It is also submitted that the respondent authorities were regularising the services of the workmen working as Badli workmen. Under the circumstances, some of the workmen had filed civil suits as well as petitions before this Court. According to the orders passed in the petition a seniority list of the workmen was prepared for regularising their services. The learned advocate for the petitioner has made available a copy of the said list in which the name of the deceased husband of the petitioner is at sl. no.161, wherein in column 3 it is stated that he joined services on 10.9.1982, and the date of birth is shown as 19.3.1962. Number of days worked after 1.4.1984 : 376; and total number of days worked in February 1988 : 489.

4. It is submitted on behalf of the petitioner that respondent no.2 has implemented the list prepared for regularising the services of the badli workmen and in the first phase 40 to 50 workmen were regularised. Subsequently, another list was prepared from the main list and more number of workmen came to be regularised. It is the case of the petitioner that the name of the husband of the petitioner was taken out of the purview of consideration as he expired in the year 1994, and the workmen who were below the name of the husband of the petitioner in the list were considered for regularising.

5. The learned advocate placed reliance on the order passed in Special Civil Application No.7000 of 1989 which came to be confirmed in Letters Patent Appeal No.238 of 1990. The learned advocate for the petitioner also placed reliance on the judgement and order of this Court (Coram : M.R. Calla, J.) dated 7.12.1999 in Special Civil Application No.8553 of 1998. It is the case of the petitioner that her case is required to be considered on the same lines as was considered in the case of the petitioners of those petitions, namely, Special Civil Applications Nos.7000 of 1989 and 8353 of 1998. It is

also submitted that the petitioner is the widow and is having four children and that there is no source of earning livelihood and that applying the ratio of the aforesaid two proceedings, the authorities ought to have considered the case of the petitioner for giving her appointment on compassionate grounds.

6. The learned advocate Mr. Patel appearing on behalf of the respondent authorities is not in a position to distinguish the facts of the present case from the facts of the aforesaid cases and therefore, as a necessary consequence, the same result must follow. Mr. Patel had no alternative but to admit that so far as the judgment and order of this Court in Special Civil Application No.7000 of 1989 is concerned it is already confirmed in Letters Patent Appeal No.238 of 1990 and therefore, the controversy stands settled so far as this Court is concerned. Mr.Patel is also not able to point out as to whether the matter is taken higher or not and if yes what is the outcome. Therefore, on the basis of the aforesaid two judgements and orders in the aforesaid proceedings, this petition is required to be allowed.

7. The fact situation that the petitioner's husband was in employment since 1982, may be as a daily wager or badli worker and that his name was included in the list of employees to be regularised has not been disputed. In view of this factual position, I find that the respondent, State of Gujarat and its functionaries, which are part and parcel of the welfare State cannot take advantage of the unfortunate demise of the petitioner's husband while his case for regularisation was pending. Had the petitioner not died, he too would have been regularised like the other employees. The respondent authorities cannot and should not disown the just and honest claim qua the petitioner, who is seeking compassionate appointment as her husband died on 25.5.1994. The respondent authorities are not able to put forward any other ground to resist the claim of the petitioner made in this petition.

8. In the facts and circumstances of the case, when a beneficial policy is adopted by the State, it must culminate into the real benefit to the persons for whose benefit such a policy is framed. The policy cannot be allowed to be defeated on technical grounds as have been raised in this case.

9. In the result, the petition succeeds. The respondent authorities are directed to consider the case of the petitioner for compassionate appointment forthwith

and issue appropriate orders giving suitable appointment to her on compassionate grounds at the earliest, but in no case later than 31st August 2000. The petition is allowed. Rule is made absolute with no order as to costs.

10th May 2000 (Ravi R. Tripathi, J.)

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